

LEASE OPTION AGREEMENT

(Tatum Site)

THIS LEASE OPTION AGREEMENT (“**Agreement**”) is made and entered into as of the ___ day of _____, 2020 (“**Option Effective Date**”), by and between the SANTA BARBARA UNIFIED SCHOOL DISTRICT, as successor in interest to the Santa Barbara High School District, (“**District**” or “**Optionor**”) and RTA SAN SIMEON LLC, a Delaware limited liability company (“**Optionee**”).

RECITALS

A. Optionor owns fee title to certain real property consisting of approximately 23.8 acres, commonly known as the Tatum Site, located in the County of Santa Barbara, State of California, as more particularly described in **Exhibit A** attached hereto (the “**Premises**”).

B. In connection with Optionee's response to a request for proposals circulated by Optionor, Optionee has been selected to develop, construct, market and operate on the Premises a senior-housing real estate development project (the “**Project**”), as more particularly described and defined in Section 5.1 of the Lease (as hereinafter defined).

C. Optionor and Optionee desire to enter into this Agreement pursuant to which Optionor grants Optionee an option to lease the Premises from Optionor on the terms and conditions set forth in this Agreement and as more particularly described in the form of Ground Lease attached hereto as **Exhibit B** (the “**Lease**”).

D. All capitalized terms not hereinafter defined shall have the meanings set forth in the Lease.

AGREEMENT

NOW, THEREFORE, for good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged. Optionor and Optionee agree as follows:

1. Grant of Option. Optionor hereby grants to Optionee an option (the “**Option**”) to lease the Premises from Optionor in accordance with the terms and provisions of the Lease, which terms and provisions include Optionee’s development of a senior housing project upon the Premises.

2. Option Term.

2.1. *Duration of Option Term.* The term of the Option (the “**Option Term**”) shall commence on the Option Effective Date and expire on the three (3) year anniversary of the Option Effective Date (the “**Option Expiration Date**”).

2.2. *Option Term Extensions Due To Delays.* If the Option has not been exercised by the Option Expiration Date as a result of delays by applicable governmental authorities or other relevant non-governmental parties in processing Optionee's applications for

the Entitlements (as defined in Section 5.2 below), including, without limitation, delays resulting from the commencement of litigation relating to Entitlements, including processing delays, delays in obtaining water service, delays stemming from third party challenges relating to the parties' entering into this Agreement or the Lease; or delays as a result of Force Majeure, then upon Optionee's written notice (the "**Delay Notice**") to Optionor specifying the cause and length of the delay, the Option Expiration Date shall be extended one or more times for a period of the lesser of (a) six (6) months each, or (b) a period of time equal to the length of the delay as specified in the Delay Notice, but in no event shall all extensions exceed twenty-four (24) months in the aggregate. Optionee shall not have the right to extend the Option Expiration Date if Optionee is in material breach or default of this Agreement beyond any applicable notice and cure periods. Notwithstanding the foregoing, in the event that any action or claim relating to title to or possession of the Premises or any portion thereof (a "**Title Claim**") is asserted by a third party, the Option Term shall be extended until thirty (30) days after the full and final resolution of such Title Claim, the issuance of "no further action" letters or other comparable clearance letter from all cognizant governmental authorities confirming that the matter has been fully and satisfactorily resolved.

2.3. *Option Term Extensions Due to Optionor Default.* If Optionor is in material default in its obligations under this Agreement that delays the satisfaction of the conditions in Section 5 below, then, without limiting Optionee's rights and remedies at law, in equity, or under this Agreement, the Option Expiration Date shall be extended by the period of any such delay in the satisfaction of the conditions in Section 5 that is attributable to such material default by Optionor hereunder.

2.4. *Early Termination of Agreement.* The Agreement may be terminated at any time by Optionee with or without cause. If the Agreement terminates or expires for any reason other than a default of Optionor, except as otherwise expressly set forth in this Agreement, any Option Fee (as defined in Section 3 below) that, as of the date of such termination, has been paid by Optionee shall be retained by Optionor, Optionee shall assign and transfer to Optionor, without any consideration and free and clear of all liens, all of Optionee's assignable interest in and to non-proprietary information obtained by Optionee with respect to the Premises, and neither party will have any further obligation to the other under the terms of this Agreement or the Lease.

3. Option Fee.

Optionee shall pay in advance to Optionor an annual Option Fee of Fifty Thousand Dollars \$50,000.00 (the "**Option Fee**"). The Option Fee shall be nonrefundable unless Optionor defaults under this Agreement, or otherwise as provided herein.

3.1 Optionee shall pay the first year Option Fee to Optionor within fifteen (15) business days following the Option Effective Date. Such Option Fee shall cover a one (1) year period as calculated from the Option Effective Date. In the event Optionee terminates this Agreement during the Initial Due Diligence Period, the Option Fee shall be refundable to Optionee, exclusive of any related fees, costs and expenses. Following the expiration of the Initial Due Diligence Period, the Option Fee shall be nonrefundable unless Optionor defaults under this Agreement.

3.2 Successive year Option Fees shall be paid within fifteen (15) business days of the anniversary date of the preceding Option Effective Date.

3.3 If the Option is timely exercised on or prior to the Option Expiration Date, the pro rata portion of the Option Fee covering the balance of any period shall be credited to the initial Annual Minimum Rent due under the Lease.

4. Interim Due Diligence Period.

4.1 *Interim Due Diligence Period.* Optionee shall have ninety (90) days from the Option Effective Date during which Optionee shall perform such initial due diligence review of the Premises and the Project as Optionee deems prudent or necessary (the “**Interim Due Diligence Period**”).

4.2 *Termination.* Optionee, in its sole discretion, may terminate this Agreement for any reason during the Interim Due Diligence Period by providing written notice thereof to Optionor. If Optionee exercises its termination right under this Section 4.2, Optionor shall return the Option Fee to Optionee within fifteen (15) days following Optionor’s receipt of written notice of termination.

5. Option Conditions.

The exercise by Optionee of the Option and Optionee’s entering into the Lease shall be subject to Optionee’s satisfaction or waiver of the following conditions (collectively, the “**Option Conditions**”) during the Option Term. If Optionee exercises the Option and enters into the Lease without fulfillment of any Option Condition, any such Option Condition shall be deemed waived and Optionee shall be bound to the terms and conditions of the Lease.

5.1 *Due Diligence Period.* Optionee shall perform its due diligence review to evaluate the physical qualities and economic prospects of the Premises. This review shall include such tests, inspections, and analyses as Optionee determines necessary and appropriate to evaluate the Premises and Optionee’s contemplated development, use, and operation thereof and may include, but shall not be limited to, soil tests, hazardous waste tests, geotechnical reviews, and title searches;

5.2 *Issuance of Entitlements.* The approval (after all applicable appeal periods) of all discretionary planning, zoning, land use, and other entitlements, permits, and approvals (including, without limitation, licenses, regulatory permits, variances, certificates, consents, exemptions, decisions, actions, and/or approvals) of any governmental authorities and/or agencies which are required for Optionee’s construction of: (i) as many Age Restricted Units as may be permitted under applicable government code on that area of the Premises that is approximately 13.8 acres, and (ii) a separate facility to be used for long-term care, memory care, or some combination thereof, or such other uses approved by Optionor on that area of the Premises that is approximately 9.2 acres (as further described on the site plan attached hereto as Exhibit C), and the use and operation of the Premises for the uses contemplated in the Lease on terms and conditions acceptable to Optionee in Optionee’s sole and subjective discretion, including adequate access and sources of water for the Premises (collectively, the “**Entitlements**”);

5.3 *Accessory Services.* Availability of all offsite and onsite improvements, access, ingress and egress, easements, connections for water and sewer, and utilities shall have been secured or committed in a manner acceptable to Optionee in Optionee's sole and subjective discretion;

5.4 *Expiration/Resolution of Appeals.* Any appeal period to administratively contest the Lease and/or the issuance of the Entitlements has lapsed with no such administrative and/or legal contest having been filed, or if filed, the same has been resolved to Optionee's sole and subjective satisfaction;

5.5 *No Litigation.* There is no proceeding or litigation pending to appeal the Lease and/or the issuance of the Entitlements, or to enjoin or restrain either of the foregoing or the performance of the Development Work, or if such a proceeding or litigation has been pending, then the issuance of a dismissal, decision or judgment rendered thereon in favor of the validity of this Lease, the Entitlements, and/or the Development Work, as applicable, which dismissal, decision or judgment is not subject to further appeal and is acceptable to Optionee in Optionee's sole and subjective discretion;

5.6 *No Breach or Default.* All material obligations of Optionor contained in this Agreement shall have been fully performed in all material respects and Optionor shall not be in default under any covenant, restriction, right-of-way or easement affecting the Premises;

5.7 *Title to Premises.* Optionor shall retain fee simple title to the Premises, and Optionor shall convey a leasehold estate to the Premises acceptable to Optionee; and

5.8 *Title Policy.* A title company shall have issued or committed to issue to Optionee a title policy (the "**Leasehold Title Policy**"), subject only to the standard exclusions from coverage contained in such policy and any Permitted Exceptions (as defined in Section 7.8 below), satisfactory to Optionee. The cost of the Leasehold Title Policy shall be paid by Optionee.

6. Exercise of Option. The Option shall be exercisable by Optionee on or before the Option Expiration Date by notification from Optionee to Optionor in writing of its exercise of the Option ("**Option Exercise Notice**") and the simultaneous delivery to Optionor of two copies of the fully executed Lease. Optionor shall promptly execute and deliver to the Optionee one copy of the Lease but, in any event not later than ten (10) days following the date of Optionee's exercise of the Option.

7. Representations and Warranties of Optionor.

As an inducement to Optionee to enter into this Agreement and spend substantial funds and due diligence activities and in pursuing the Entitlements, Optionor hereby represents and warrants to Optionee as follows:

7.1 *Status.* Optionor is duly organized, validly existing and has the full power and authority to own its assets, including the Premises, and to enter into this Agreement and, if the Option is exercised by Optionee, the Lease.

7.2 *Consents; Approvals.* To the best of Optionor's knowledge, it has satisfied all statutory, regulatory or governmental requirements relating to the execution, delivery and performance of this Agreement and the Lease, other than those outstanding requirements identified on Schedule 1 attached hereto and no consent, approval, authorization or order of any court or governmental authority, other than those identified on Schedule 1, is required for the execution, delivery and performance by Optionor of, or compliance by Optionor with, this Agreement or the Lease other than those which have been previously obtained by Optionor.

7.3 *No Conflicts.* To the best of Optionor's knowledge, the execution and delivery of this Agreement and, if the Option is exercised, the Lease, and the performance by Optionor of its obligations hereunder and under the Lease will not conflict with any provision of any law or regulation to which Optionor is subject or conflict with, result in a breach of, or constitute a default under, any of the terms, conditions or provisions of any statute, law, rule or ordinance to which Optionor is subject, any of Optionor's governing documents or any agreement or instrument to which Optionor is a party or by which it is bound, or any order or decree applicable to Optionor, or result in the creation or imposition of any lien on any of Optionor's assets or properties.

7.4 *Proceedings; Enforceability.* This Agreement has been duly authorized, executed and delivered by Optionor and constitutes a legal, valid and binding obligation of Optionor, enforceable against Optionor in accordance with its terms, except as such enforcement may be limited by bankruptcy, insolvency, reorganization, moratorium or other similar laws affecting the enforcement of creditors' rights generally, and by general principles of equity. In the event Optionee exercises its Option, Optionor shall execute the Leases as provided hereunder and such execution has been duly authorized and the Lease, when executed and delivered by Optionor shall constitute a legal, valid and binding obligation of Optionor, enforceable against Optionor in accordance with its terms, except as provided above.

7.5 *Litigation.* As of [____], 2020, Optionor has not received any written notice of any current, pending or overtly threatened action, suit, proceeding or investigation related to the Premises in any court or by or before any other governmental authority which, if adversely determined, might adversely affect the condition of the Premises or the ability of Optionor to carry out the transactions contemplated by this Agreement.

7.6 *Agreements.* Optionor is not a party to any agreement or instrument or subject to any restriction which might adversely affect the Premises or Optionee's ability to develop, construct, market and operate the Premises as described in the Lease.

7.7 *San Marcos Growers.* Optionor currently allows the San Marcos Growers (the "**San Marcos Growers**") to use and encroach on the Premises in connection with their use of a water well and other agriculture operations. No written lease exists between Optionor and the San Marcos Growers and the arrangement between the parties may be terminated at any time; provided, however, that the San Marcos Growers will be provided at least two (2) months notice to cease all operations on the Premises (without payment of any amounts by Optionee) and, if so requested by Optionor, to remove any improvements or personal property located thereon.

7.8 *Title.* Optionor has good, marketable and insurable fee simple title to the Premises. Any exceptions to title shown (i) on the Preliminary Report issued by Chicago Title dated _____, a copy of which is attached hereto as **Exhibit D** (the “**Preliminary Report**”), (ii) in any underlying exception document referred to therein, or (iii) on any survey of the Premises (the “**Permitted Exceptions**”), no person has any claim to, right to use or right to occupy all or any portion of the Premises. No person has any claim to a prescriptive easement, implied dedication or other type of claim pertaining to the use, occupancy or ownership of the Premises, any portion of the Premises, or any right in or to the Premises.

7.9 *Premises.* The Premises are comprised of one or more legal parcels which constitute separate tax lots and do not constitute a portion of any other tax lot that is not part of the Premises. As of the Option Effective Date, no condemnation or other proceeding has been commenced or, to Optionor’s knowledge, is contemplated with respect to all or any portion of the Premises. As of the Option Effective Date, to Optionor’s knowledge, there are no pending or proposed special or other assessments for public improvements or otherwise affecting the Premises nor are there any contemplated improvements to the Premises that may result in such special or other assessments.

7.10 *Compliance.* Optionor has not received any written notice from any governmental authority of violation of any applicable building, zoning and land use laws, ordinances, regulations and codes. To Optionor’s knowledge, Optionor is not in default or violation of any order, writ, injunction, decree or demand of any governmental authority, the violation of which might materially adversely affect the Premises or the ability of Optionee to develop the Premises with a senior housing project.

7.11 *Hazardous Materials.* To Optionor’s knowledge, except as described in this Section 7.11, neither Optionor nor any other person has used, generated, processed, stored, disposed of, released or discharged any Hazardous Materials on, under, or about the Premises or transported them to or from the Premises. To Optionor’s knowledge, Optionor has not received any written notice from any governmental entity or other party that the Premises violates or has been alleged by a party to violate any applicable Environmental Laws. For purposes hereof, the term “**Hazardous Materials**” means any pollutants, contaminants, hazardous or toxic substances, materials or waste (including petroleum, petroleum byproducts, radon, asbestos and asbestos containing materials, polychlorinated biphenyls (“PCBs”), PCB-containing equipment, radioactive elements, infectious agents, and urea formaldehyde, as such terms are used in any Environmental Laws and any other gases, liquids or solids regulated by Environmental Laws. For purposes hereof, “**Environmental Laws**” means all federal, state and local environmental laws, rules, statutes, directives, binding written interpretations, binding written policies, ordinances and regulations issued by any governmental entity with respect to or which otherwise pertain to or affect the Premises or any portion thereof, the use, ownership, occupancy or operation of the Premises, or any portion thereof by Optionor or Optionee, as the same have been amended, modified or supplemented from time to time, including but not limited to the Comprehensive Environmental Response, Compensation and Liability Act of 1980 (42 U.S.C. § 9601 et seq.), the Hazardous Substances Transportation Act (49 U.S.C. § 1802 et seq.), the Resource Conservation and Recovery Act (42 U.S.C. § 6901 et seq.), the Water Pollution Control Act (33 U.S.C. § 1251 et seq.), the Safe Drinking Water Act (42 U.S.C. § 300f et seq.), the Clean Air Act (42 U.S.C. § 7401 et seq.), the Solid Waste Disposal Act (42 U.S.C. § 6901 et seq.), the Toxic Substances Control Act

(15 U.S.C. § 2601 et seq.), the Emergency Planning and Community Right-to-Know Act of 1986 (42 U.S.C. § 11001 et seq.), the Radon and Indoor Air Quality Research Act (42 U.S.C. § 7401 note, et seq.), the Superfund Amendment Reauthorization Act of 1986 (42 U.S.C. § 9601 et seq.), comparable state and local laws, and any and all rules and regulations under any and all of the aforementioned laws. At times unknown, third parties have deposited soil and related materials at various locations on the site and Optionor has conducted no investigation of the same and makes no warranties or representations in regards thereto.

7.12 *Optionor's Knowledge.* As used in this Agreement or in any documents delivered pursuant hereto, the phrases "to Optionor's knowledge," "known to Optionor," "Optionor has not received any notice," or "Optionor has not received any written notice" (or similar words), shall mean that the representations and warranties (or other provisions) qualified by any such phrases are based on the actual knowledge of Optionor.

7.13 *Survival.* All representations and warranties contained in this Section 7 are qualified by any information contained in any documents or other materials made available to Optionee in connection with its review of matters pertaining to the Premises. In the event Optionee is actually aware prior to the ratification of the Lease that any of the representations and warranties set forth in this Section 7 are not true, correct or complete, and Optionee nonetheless proceeds execute the Lease, such representations and warranties shall be deemed to be qualified by all matters of which Optionee is actually aware, and Optionee shall have no claim for breach of any such representation or warranty.

8. Covenants of Optionor.

During the Option Term, Optionor covenants and agrees as follows:

8.1 *Maintenance of Premises.* It will, at its sole cost and expense, keep, maintain and repair the Premises in the same condition in which it currently exists.

8.2 *No Negotiation with Third Parties.* It will not accept any backup offers to option, lease, purchase, enter into joint ventures with or otherwise transfer, convey or lease the Premises or any interest therein.

8.3 *Title Exceptions.* It will not create or suffer to be created any exceptions, burdens, liens or encumbrances on title to the Premises except for the Permitted Exceptions.

8.4 *Defense of Title.* In the event that any third party commences any Title Claim, it will cooperate with the title company that issued the Leasehold Title Policy in defending the Title Claim.

8.5 *Contracts.* Unless the Parties otherwise agree, it will not renew, extend, modify or enter into any new contracts or agreements affecting the Premises which are not terminable on thirty (30) days written notice without payment of any fee or other amount or which could survive exercise of the Option.

9. Inspection; Environmental Matters.

9.1 *Right of Entry.* Optionee shall have the right to enter upon the Premises to conduct Optionee's due diligence investigations of the Premises during the Option Term. Prior to access by Optionee onto the Premises, Optionee shall: (a) deliver to Optionor written evidence that Optionee has procured the insurance required under Section 9.2 below; and (b) to the extent practicable, provide Optionor with prior written or telephonic notice of any intended entry. In connection with Optionee's entry upon the Premises pursuant to this Agreement, Optionee shall: (i) access the Premises in a safe manner; (ii) allow no dangerous or hazardous condition created by Optionee or Optionee's agents to remain following such access; (iii) comply with all laws and obtain all permits required in connection with such access; and (iv) restore the Premises to its condition prior to any entry by Optionee, to the extent that the need for such restoration is caused by the acts of Optionee and Optionee does not exercise the Option.

9.2 *Insurance.* Prior to entering the Premises, and without limiting Optionee's indemnification of Optionor during the term of this Agreement, Optionee shall provide Optionor with evidence satisfactory to Optionor that Optionee has liability insurance in accordance with Section 8.1.1 of the Lease (provided that, for purposes of this Agreement, the minimum insurance thresholds for general liability insurance under said Section 8.1.1 shall each be \$5,000,000). Optionee shall maintain that insurance during the term of this Agreement.

9.3 *Indemnification of Optionor.* Optionee hereby agrees to protect, indemnify, defend and hold Optionor and its officials, trustees, employees, agents, representatives, consultants and contractors free and harmless from and against any and all claims, costs, expenses, losses, damages, liabilities, fees, fines and penalties (collectively, "**Claims**") to the extent resulting from Optionee's access to the Premises or its exercise of its right of entry onto the Premises pursuant to this Section 9, including any inspections, surveys, tests or studies performed by Optionee or its employees, consultants or contractors, except to the extent such claims result from the gross negligence or willful misconduct of Optionor or its agents, employees or representatives. Optionee shall keep the Premises free and clear of mechanics' liens and materialmen's liens to the extent arising from Optionee's inspection of the Premises.

10. Compliance with Laws. In connection with its efforts to satisfy the Option Conditions, including but not limited to its efforts to obtain all Entitlements, Optionee shall comply with all applicable laws, ordinances, and codes, and in the event any litigation results therefrom in which Optionor is named as a party, Optionee shall defend, hold harmless and indemnify Optionor.

11. Default.

11.1 *Optionor Default.* Optionor shall be in default in the performance of any obligation required to be performed by Optionor under this Agreement if (i) there is a breach of any of Optionor's representations and warranties under Section 7, or (ii) Optionor has failed to perform such obligation within thirty (30) days after receipt of Notice from Optionee specifying in detail Optionor's failure to perform; provided, however, that (a) if the nature of Optionor's

obligation is such that more than thirty (30) days are required for its performance, Optionor shall not be deemed in default if it shall commence such performance within thirty (30) days and thereafter diligently pursue the same to completion, and (b) if Optionor's default is the failure to duly execute and deliver to Optionee the Lease as required hereunder, then the period for Optionor's cure shall be ten (10) business days. If Optionor defaults under this Agreement, as defined above, then Optionee may, at Optionee's option, pursue any and all remedies available to Optionee under this Agreement, at law, or in equity including, without limitation, the following: (i) waive such default and proceed with the exercise of the Option and the mutual execution and delivery of the Lease; or (ii) terminate this Agreement, in which event Optionor shall immediately refund to Optionee the entire Option Fee previously paid by Optionee, plus the amount of Optionee's reasonable out-of-pocket costs and expenses incurred in connection with this Agreement following execution of the same, but excluding consequential damages or amounts for lost profits, or (iii) file in any court of competent jurisdiction an action for specific performance or other form or equitable relief to cause Optionor to enter into the Lease with Optionee and to perform Optionor's obligations pursuant to the terms and conditions of the Lease. Notwithstanding the above, it is expressly understood and agreed that any money judgment resulting from any default or other claim arising under this Lease shall be satisfied only out of Optionor's interest in the Premises and no other real, personal, or mixed property of Optionor wherever located, shall be subject to levy on any such judgment obtained against Optionor.

11.2 *Optionee Default.* Notwithstanding anything to the contrary contained in this Agreement, so long as Optionee has not terminated (or is not deemed to have terminated) this Agreement prior to the Option Expiration Date, if Optionee defaults under this Agreement and such default is not cured within thirty (30) days of Optionee's receipt of written notice from Optionor of such default (or, if such cure will reasonably take more than thirty (30) days, such longer period as is reasonably necessary in order for Optionee to cure such default), then Optionor shall have the right to terminate this Agreement by written notice to Optionee and to retain any Option Fee which, as of the date of such termination, has been paid or remains due and payable by Optionee to Optionor under this Agreement and pursue any and all remedies available to Optionor under this Agreement at law or in equity including, without limitation, filing in any court of competent jurisdiction an action for damages, specific performance or other form of equitable relief to cause Optionee to perform Optionee's obligations pursuant to the terms and conditions of this Agreement.

12. Recordation of Memorandum of Option. Concurrently with the mutual execution and delivery of this Agreement, Optionor and Optionee shall each execute (and have acknowledged) and deliver to the other party a memorandum of this Agreement in the form attached hereto as Exhibit E (the "**Memorandum of Option**"). Optionee may record the Memorandum of Option against the Premises in the official real estate records of Santa Barbara County, California. If this Agreement terminates for any reason (other than Optionor's default) prior to the parties' entering into the Lease, Optionee shall, upon written request from Optionor, execute a commercially reasonable release or similar instrument requested by Optionor as is necessary to cause the Memorandum of Option to be removed from title to the Premises.

13. Risk of Loss; Condemnation. All risk of loss relating to the Premises shall remain upon Optionor until the Lease Effective Date. If, before the Lease Effective Date, any material portion of the Premises is taken by eminent domain (or under threat or pendency of eminent

domain), Optionor shall, within ten (10) business days of receipt of notice of any taking or threatened taking, notify Optionee thereof and Optionee shall have the option to:

(a) Terminate this Agreement upon notice to Optionor given within thirty (30) days after receipt of such notice from Optionor, in which event Optionee shall receive a return of the Option Fee, together with all interest accrued thereon; or

(b) Proceed with this Agreement and, if the Option is exercised, Optionor shall assign and/or transfer to Optionee the portion of the condemnation award commensurate with any harm to Optionee's rights, in which case Optionee shall pay the full rent provided under the Lease.

14. Assignment. Optionee may not assign this Option or transfer its rights or obligations under this Agreement to one or more entities (other than entities that are controlled by Optionee or under common control of Optionee) without the prior written consent of Optionor, which consent may be granted, conditioned or denied in Optionor's sole and absolute discretion.

15. Miscellaneous.

15.1 *Time is of the Essence.* Time is of the essence of this Agreement, including, without limitation, with respect to all times, restrictions, conditions and limitations set forth herein.

15.2 *Waivers.* Except as stated in writing by the waiving party, any waiver by either party of any breach of any one or more of the covenants, conditions, terms or provisions of this Agreement shall not be construed to be a waiver of any subsequent or other breach of the same or of any other covenant, condition, term or provision of this Agreement, nor shall failure on the part of either party to require exact, full and complete compliance with any of the covenants, conditions, terms or provisions of this Agreement be construed to in any manner change the terms hereof or estop that party from enforcing the full provisions hereof.

15.3 *Notices.* All notices required or permitted to be given under this Agreement shall be given in accordance with the terms and provisions of Section 14.10 of the Lease.

15.4 *Captions.* The captions contained in this Agreement are for informational purposes only, and are not to be used to interpret or explain the particular provisions of this Agreement.

15.5 *Construction; Severability.* In the case of any uncertainty or ambiguity regarding any part of this Agreement, the language shall be construed in accordance with its fair meaning rather than being interpreted against the party who caused the uncertainty to exist. The unenforceability, invalidity or illegality of any provision hereof shall not render any of the other provisions herein unenforceable, invalid or illegal.

15.6 *Entire Agreement; Amendment.* This Agreement and the Lease (as such Lease is specifically set forth in **Exhibit B** attached hereto) represent the full and complete understanding of the parties relating to the subject matter hereof, and supersede any and all agreements, understandings and representations made prior hereto with respect to such matters; provided, however, that following the execution of the Lease, in the event of conflict

between this Agreement and the Lease, the provisions of the Lease shall control. This Agreement may be amended only by written agreement signed by both of the parties hereto.

15.7 *Performance on Non-Business Day.* Unless otherwise stated, the term “day” shall mean “calendar day”. If the time period for the performance of any act called for under this Agreement occurs or expires on a Saturday, Sunday, or any other day in which banking institutions in the State of California are authorized or obligated by law or executive order to close (“**Holiday**”), the act in question may be performed on the next succeeding day that is not a Saturday, Sunday, or Holiday.

15.8 *Joint Effort.* Preparation of this Agreement has been a joint effort of the parties, and the resulting document shall not be construed more severely against one of the parties than against the other.

15.9 *Applicable Law.* This Agreement shall be governed by, and construed and enforced in accordance with, the laws of the State of California. Any lawsuit or other legal action or proceeding arising under this Agreement shall be filed and prosecuted only in Santa Barbara County Superior Court, California.

15.10 *Counterparts.* This Agreement may be signed in any number of counterparts. Each counterpart shall represent an original of this Agreement and all such counterparts shall collectively constitute one fully-executed document.

15.11 *Successors and Assigns.* Subject to Section 14 above, the rights and obligations of the parties under this Agreement shall be binding upon the parties’ respective successors and assigns.

15.12 *Exhibits and Schedules.* Exhibits and Schedules attached to this Agreement are hereby expressly incorporated herein by reference.

IN WITNESS WHEREOF, Optionor and Optionee have entered into this Agreement as of the day and year first written above.

SANTA BARBARA UNIFIED SCHOOL DISTRICT
A public body, corporate and politic

By: _____

Name: _____

Its: _____

RTA SAN SIMEON LLC, a Delaware limited liability company

By: _____

Name: _____

Its: _____

EXHIBIT A
PREMISES

EXHIBIT B
FORM OF GROUND LEASE

EXHIBIT C
SITE PLAN

EXHIBIT D
PRELIMINARY REPORT

EXHIBIT E

MEMORANDUM OF OPTION

FORM OF MEMORANDUM OF OPTION AGREEMENT

RECORDING REQUESTED BY
AND WHEN RECORDED RETURN TO:

RTA San Simeon LLC

[_____]

[_____]

Attn: [_____]

(Space above this line for recorder's use)

MEMORANDUM OF OPTION AGREEMENT

THIS MEMORANDUM OF OPTION AGREEMENT (this "**Memorandum**") is made, executed and delivered as of the _____ day of _____, 2020, by and between the Santa Barbara Unified School District, a public body, corporate and politic ("**SBUSD**") and RTA San Simeon LLC, a Delaware limited liability company ("**RTA**"), who agree as follows:

1. SBUSD has granted to RTA an option to lease ("**Option**") with respect to approximately 23.8 acres of real property located in the County of Santa Barbara, State of California, commonly known as the Tatum Site (the "**Premises**"). SBUSD authorizes RTA to record this Memorandum in any and all appropriate recording offices.

2. SBUSD has granted this Option to RTA pursuant to the terms of that certain Option Agreement, executed by and between SBUSD and RTA as of [_____], 20[19] (the "**Option Agreement**"). This Memorandum is prepared for the purposes of recordation and shall in no way alter or affect the rights and obligations of the parties under the Option Agreement. In the event of any conflict between this Memorandum and the terms of the Option Agreement, the terms of the Option Agreement shall prevail.

3. By way of this Memorandum and the Option Agreement, RTA has no present right to occupy or possess the Premises.

4. The parties have executed and recorded this Memorandum to give notice of the Option granted to RTA by the Option Agreement, and the respective rights and obligations of the parties thereunder.

5. The parties understand, acknowledge and agree that the Option and the transaction covered by the Option Agreement is not a loan, a sale of the Premises with a leaseback option, or any other debt or financing transaction.

6. RTA shall have no right at any time to assign the Option and this Memorandum to a third party (other than to entities that are controlled by RTA or under common control of RTA) without prior written consent of SBUSD.

7. This Memorandum is governed by California law.

[Signatures appear on following page.]

IN WITNESS WHEREOF, the parties have executed this Agreement as of the date first above written.

OPTIONOR: SANTA BARBARA UNIFIED SCHOOL DISTRICT,
a public body, corporate and politic

A Notary Public or other officer completing this certificate verifies only the identity of the individual who signed the document to which this certificate is attached, and not the truthfulness, accuracy, or validity of that document.

State of California }
County of Santa Barbara }

On _____, before me, _____, Notary Public,
personally appeared

who proved to me on the basis of satisfactory evidence to be the person(s) whose name(s) is/are subscribed to the within instrument and acknowledged to me that he/she/they executed the same in his/her/their authorized capacity(ies), and that by his/her/their signature(s) on the instrument the person(s), or the entity upon behalf of which the person(s) acted, executed the instrument.

I certify under PENALTY OF PERJURY under the laws of State of California that the foregoing paragraph is true and correct.

WITNESS my hand and official seal.

SIGNATURE _____

PLACE NOTARY SEAL ABOVE

[Signatures continue on following page.]

OPTIONEE: RTA SAN SIMEON LLC, a Delaware
limited liability company

A Notary Public or other officer completing this certificate verifies only the identity of the individual who signed the document to which this certificate is attached, and not the truthfulness, accuracy, or validity of that document.

State of California }
County of Santa Barbara }

On _____, before me, _____, Notary Public,
personally appeared

who proved to me on the basis of satisfactory evidence to be the person(s) whose name(s) is/are subscribed to the within instrument and acknowledged to me that he/she/they executed the same in his/her/their authorized capacity(ies), and that by his/her/their signature(s) on the instrument the person(s), or the entity upon behalf of which the person(s) acted, executed the instrument.

I certify under PENALTY OF PERJURY under the laws of State of California that the foregoing paragraph is true and correct.

WITNESS my hand and official seal.

SIGNATURE _____

PLACE NOTARY SEAL ABOVE

SCHEDULE 1

OUTSTANDING CONSENTS, APPROVALS OR REQUIREMENTS

None.